

June 10, 2015

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Lower Ley Creek Notice Letter Parties

- Private Parties
 - Carrier Corporation
 - Cooper Crouse Hinds
 - National Grid
 - Syracuse China
 - Plaza East (not participating)
 - Oberdorfer (not participating)

- Public Parties
 - City of Syracuse
 - Onondaga County
 - Town of Salina

Where We Are Now

- The private parties have formally retained Arcadis to act as their environmental consultant for the performance of the RD assuming successful AOC negotiations – the public and private parties are engaged in discussions
- Arcadis has started work on the SOW, the PDI, and development of a Work Plan. A meeting has been requested with Pam Tames and EPA technical representatives to discuss
- Together with Arcadis and the parties' technical consultants, the Lower Ley Creek Parties have a strong handle on the technical side of the RD

Thank You

- We appreciate EPA taking the time to sit down with the Lower Ley Creek parties to discuss the AOC for the RD
- The Lower Ley Creek parties are very interested in working with EPA to reach a solution that is a win for EPA, the community, and the parties
- It is our hope to have a productive conversation regarding the key issues with the current draft, and to make progress on reaching an AOC that is mutually satisfactory

AOC Key Issues

- Despite GM's overwhelming contribution to the site, we are confident we can find a path forward to perform the RD and ultimately the RA given the GM Fund
- We are willing to perform the RD assuming successful AOC negotiations, and along with Arcadis, we are already working on it
- There are some core issues that need to be understood and resolved to move forward with the AOC

FIGURE 1

Aerial map of the Falmerton Group site showing PCB sampling locations.

The map displays the Falmerton Group Facility, the Falmerton Creek, and the Falmerton Canal. Sampling locations are marked with symbols indicating PCB concentration ranges. The legend defines these symbols as follows:

- Open circle: Less than 100 ppb
- Circle with a dot: 100 - 499 ppb
- Circle with a cross: 500 - 999 ppb
- Circle with a plus: 1000 - 4999 ppb
- Circle with an asterisk: 5000 - 9999 ppb
- Circle with a diamond: 10000 - 49999 ppb
- Circle with a square: 50000 - 99999 ppb
- Circle with a triangle: 100000 - 499999 ppb
- Circle with a circle: 500000 - 999999 ppb
- Circle with a cross: 1000000 - 4999999 ppb
- Circle with a plus: 5000000 - 9999999 ppb
- Circle with an asterisk: 10000000 - 49999999 ppb
- Circle with a diamond: 50000000 - 99999999 ppb
- Circle with a square: 100000000 - 499999999 ppb
- Circle with a triangle: 500000000 - 999999999 ppb
- Circle with a circle: 1000000000 - 4999999999 ppb
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- Circle with a triangle: 5000000000000000000000000000000000000 - 9999999999

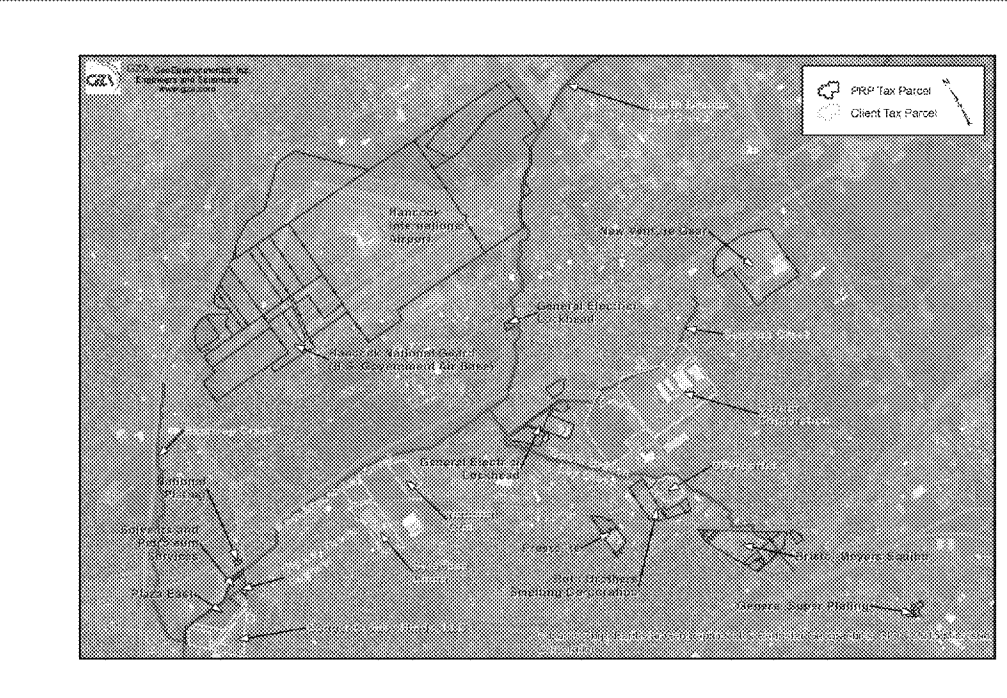
AOC Key Issues

1. Hobart concern: Immediate start of a 3-year statute of limitations period
 - The Lower Ley Creek parties currently have no way of knowing who will be participating in the RD or the RA, what overall costs will total, and if/when reimbursement from the GM Fund will occur
 - The draft AOC would require the Lower Ley Creek parties to bring a contribution action within 3 years of its effective date, without knowing who will participate in the RD or RA, or whether there will be a cost shortfall
 - There is no policy reason for EPA to put us in the position of choosing now to either give up our contribution rights or bring a contribution action
 - The revisions we have proposed will help support the timely completion of the RD without liability or litigation distractions. There would appear to be no reason for EPA not to accommodate our concerns

Additional Potential PRPs

- Bristol-Myers Squibb
- Roth Brothers Smelting Corporation
- General Electric / Lockheed
- Prestolite
- Solvents and Petroleum Services
- New Venture Gear
- Hancock International Airport
- Hancock National Guard
- General Super Plating
- National Plating
- United States

PRP Locations



LATHAM & WATKINS LLP

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AOC Key Issues

2. Requiring the payment of EPA's RD oversight costs

- Given the GM Fund, there is no need for participating PRPs to pay future oversight costs
- The issue of EPA's costs should be resolved as part of the RA consent decree when EPA's oversight costs and the estimated costs of the RA are better known
- The parties need an RD AOC structure that allows them to recruit additional parties to perform the RA, and the added pressure of EPA's RD costs is unnecessary and counterproductive at this point

AOC Key Issues

3. Delayed and contingent reimbursement of RD costs

- GM Settlement Agreement does not contain any language prioritizing RA costs above all other costs
- The draft AOC cost reimbursement hierarchy requires the Lower Ley Creek parties to pay significant upfront costs, while leaving uncertainty as to whether there will be reimbursement from the GM Settlement Fund, and further reimbursement per capita may not be consistent with how the funds are raised and in any event provides the wrong incentive
- We believe reimbursement of RD costs at the time of execution of the RA consent decree is a “carrot” EPA should employ to secure a commitment to the RD
- This issue is a significant impediment to the governmental PRPs participating in the RD process in light of the potential impacts to their taxpayers

AOC Key Issues

4. High stipulated and work take-over penalties

- Penalties are a disincentive to performance of the RD
- It is in all parties interests to have the RD performed so the groundwork can be laid for an RA consent decree
- High penalties do not further the mutual goals, and seem punitive when we're seeking to address GM's mess
- High penalties are a particular impediment to public party participation both in terms of the inherent uncertainties they create and negative reactions they trigger

AOC Key Issues

5. Removal of right to make PRP claims against the United States

- Premature as the US may well be a PRP
- We propose that this issue be deferred to the RA consent decree

AOC Key Issues

6. Requirement to provide financial security

- Given the GM Fund, financial security is unnecessary
- The cost of financial security is another impediment to our mutual goals
- No apparent policy reason to require financial security here

Summary

- GM's PCBs are overwhelmingly contaminant of concern in the soils on the banks and in the sediments of the Creek; the Lower Ley Creek parties have been doing their best to determine an effective, equitable solution for all
- The parties believe the key to ultimate resolution is development of the RD, and that EPA should, consistent with its policies and knowledge of the GM Fund, accommodate the parties' key interests on the RD AOC and defer all non-essential issues to the RA consent decree

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